

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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May 6, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy:

We write regarding the Environmental Protection Agency's (EPA) proposed rule entitled "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act," published at 81 Fed. Reg. 13638, and also regarding the agency's related Information Collection Request (ICR 2537.01). In the rule, EPA proposes changes to its Risk Management Program regulations, including revisions to accident prevention program requirements, emergency response requirements, public availability of chemical hazard information, and other changes to certain regulatory definitions and data elements submitted in risk management plans.

To respond to this proposed rule, EPA provided the public initially with a 60-day comment period, requiring all comments on the proposed rule by May 13, 2016 and for related Information Collection Request by April 13, 2016. We understand that in response to numerous requests for an extension, the agency has declined to grant even a limited extension.

We believe the current comment period is inadequate for public review and comment on the proposed rule. EPA projects approximately 12,500 facilities, including small businesses, are potentially affected by the proposed rule and that costs to comply with the rule would exceed \$1 billion over a 10-year period. The proposed rule is lengthy and the docket includes nearly 300 supporting documents, as well as the agency's Regulatory Impact Analysis and other technical documentation. Given the complexity and scope of the rulemaking, the technical, legal and practical issues raised, and the data commenters may need to collect to respond to the proposal, additional time for public comment is warranted.


We are concerned that EPA has been proceeding on an accelerated timeline that will not allow for meaningful and thorough public review of the proposal, or for appropriate agency consideration of public comments. For example, there are questions about whether the agency has fully considered the comments and recommendations submitted to date by small entities,

including small businesses and small governmental jurisdictions, potentially subject to the rule. While EPA convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations from Small Entity Representatives (SER) potentially subject to the rule's requirements, we understand EPA sent the proposed rule to the Office of Management and Budget on December 21, 2015,¹ two months before completion of the SBAR Panel's final report with recommendations, and that the proposed rule was signed only 5 days after receiving those recommendations.²

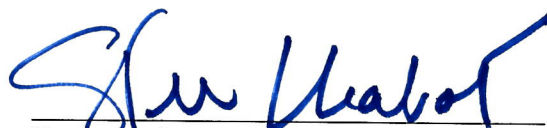
Finally, we understand that proposed regulations are also under consideration by the Department of Labor's Occupational Safety and Health Administration (OSHA) under its Process Safety Management (PSM) program, also authorized under the Clean Air Act. These pending PSM regulations have the potential to propose requirements that are conflicting or duplicative, and to create significant uncertainty for the regulated community.

For the foregoing reasons, we believe EPA should provide a full 30-day extension for comment on the proposed rule until June 13, 2016, and reopen and extend the related ICR comment period until June 13, 2016. Further, to the extent that OSHA moves forward with a proposed rule relating to the PSM program, the comment period for EPA's proposed rule should also be further extended or reopened to allow the public at least 30 days to review the EPA and OSHA regulations concurrently. Thank you for your consideration of this request.


Sincerely,



Fred Upton
Chairman
Committee on Energy and Commerce



Steve Chabot
Chairman
Committee on Small Business



Ed Whitfield
Chairman
Committee on Energy and Commerce
Subcommittee on Energy and Power

¹ See Regulatory Development and Review Tracker, <https://yosemite.epa.gov/oepi/RuleGate.nsf/byRIN/2050-AG82>.

² The regulatory review was concluded on February 24, 2016, and the proposed rule was signed on February 25, 2016. See <https://yosemite.epa.gov/oepi/RuleGate.nsf/byRIN/2050-AG82>. see also 81 Fed. Reg. at 13702. The SBAR Panel Final Report is dated February 19, 2016 and is available at <https://www.epa.gov/reg-flex/sbar-panel-modernizing-risk-management-plan-rmp-rule>.

cc: The Honorable Howard Shelanski
Administrator, Office of Information and Regulatory Affairs

The Honorable David Michaels
Assistant Secretary of Labor, OSHA

The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce

The Honorable Nydia Velázquez
Ranking Member
Committee on Small Business

The Honorable Bobby Rush
Ranking Member
Committee on Energy and Commerce
Subcommittee on Energy and Power